IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

Crl.Rev.Pet.No. 617 of 1999()

AGAINST THE ORDER DT.30.6.99 IN CRA.356/1996 of SESSIONS COURT, THRISSUR
CC.306/1995 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KODUNGALLUR

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REVN. PETITIONER:

CHANDRAN, S/O.AIPUNJI,
CHITTAPURATH HOUSE,
PORI BAZAR, S.N.PURAM,
THRISSUR.

BY ADV. SRI.RAJIT

RESPONDENT:

STATE OF KERALA,
REP.BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 18/ 06/2007 , THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.R.P.NO.617 OF 1999

DATED THIS THE 18TH JUNE 2007

ORDER

The revision petitioner stands convicted for the offence under Section 324 I.P.C. and sentenced to undergo simple imprisonment for one month and to pay a fine of Rs.1,000/- and in default to undergo simple imprisonment for two months. It is also mentioned that the amount of fine if realized shall be paid to PW1 as compensation under Section 357(1)Cr.P.C.

2. The prosecution case is that on 7-5-1995 at about 3.15 p.m. the accused attacked PW1 with MO.1 chopper which is a dangerous weapon in the pathway near the house of PW1 on account of previous animosity arising out of a transaction between the father of PW1 and the brother of the accused.

3. The evidence adduced in the matter consisted of PWs.1 to 9 that included Pw.1, the injured, and Exts.P1 to P4 and MO.1 chopper. Pws.1 to 4 have supported the prosecution version. PW5 another occurrence witness turned hostile. PW6 is

the Doctor who issued Ext.P2 wound certificate. PWs7 and 8 are the police officials. The defence has examined as DWs.1 and 2, the Doctors who proved Ext.D1 case sheet of the accused. It is the case of the revision petitioner/accused that he sustained injuries as evident from Ext.D1 and the prosecution has not explained the same and hence the evidence with respect to the incident adduced by the prosecution should not be relied on to convict him.

4. I find that the accused has not lodged any complaint with respect to the incident nor was any question asked in the cross examination of Pw9, the investigating officer as to the non-explanation of the injury sustained by the accused. The appellate court has considered the above contention and has noted that it is possible that the injuries on the person of the accused, i.e. incised wound on three fingers of left hand is possible while the de facto complainant grappled with him. It is evident from the version of the Doctor that the assailant holding a weapon like MO.1 chopper is likely to sustain such injuries noted in Ext.D1 to himself while he wields such a weapon as a

weapon of offence and his action is resisted.

5. In the circumstances and in view of the evidence adduced and the findings of the court below, I find no reason to interfere in the concurrent findings of the courts below. The conviction is confirmed.

Considering the plea of the counsel for the revision petitioner for leniency pointing out that the incident has taken place in 1995 and that more than 10 years have elapsed since the commencement of the proceedings, I find that in the circumstances the sentence is liable to be modified. Hence, the sentence is modified to imprisonment till the rising of the court and to pay a compensation of Rs.10,000/- to PW1 and in default to undergo simple imprisonment for three months. The revision petitioner shall appear before the Judicial First Class Magistrate, Kodungallur on 30-7-2007 to receive sentence. The Crl.revision petition is disposed of accordingly.

ks. **K.R.UDAYABHANU, JUDGE**

K.R.UDAYABHANU, J

CRL.R.P.NO.617 of 1999

ORDER

18-6--2007

ORDER ON CRL.M.P.NO. 2760/1999 IN CRL.R.P.NO. 617/1999

DISMISSED.

18-6-2007 **SD/-K.R.UDAYABHANU, JUDGE**

TRUE COPY

P.S.TO JUDGE